IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 33 of 2006

LAXMAN RAM
V/S
KISHANA RAM

Mr. MC BHOOT, for the appellant / petitioner

Date of Order : 18.12.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Reportable

Heard learned counsel for the appellant.

The submissions made by the learned counsel is that in the agreement there is stipulation about refund of Rs.32,000/- in the event of the defendant defaulting to perform the agreement and therefore, on the face of stipulation the decree for specific performance could not be passed.

It was also contended that in para 2 of the plaint, the plaintiff had misquoted the agreement by alleging that there was a stipulation to the effect that in the event of default the plaintiff would be entitled to have the agreement enforced by the Court while there is no such stipulation of the agreement.

I have considered the submission and have gone through the record.

True it is, that in the agreement there is no such recital, that in the event of default by the defendant, the

plaintiff would be entitled to have the agreement enforced through court and there is stipulation of refund of Rs.32,000/-, however, in my view, in view of the judgment of the Hon'ble Supreme Court in Motilal Jain Vs. Smt. Ramdasi Devi & Ors. reported in JT 2000(8) SC 59, Manzoor Ahmed Margray Vs. Gulam Hassan Aram & Ors. reported in JT 1999(8) SC 34, K.Narendra Vs. Riviera Apartments (P) Ltd. reported in JT 1999(4) SC 428 as well as of this Court in Smt. Shakuntla Devi Vs. M/s. Mohanlal Amrit Raj Jain Market, Pali reported in AIR 1994 Rajasthan 259 the mere fact that such stipulation is there, it does not by itself disentitle the plaintiff to the decree for specific performance.

I thus do not find any force in the appeal. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

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